IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **FAO No. 9410 of 2014**

Date of Decision: November 27 , 2018.

Prem and another ...... APPELLANT(s)

Versus

Parlad and others ...... RESPONDENT (s)

2. **FAO No. 9411 of 2014**

Bateri Devi and others ...... APPELLANT(s)

Versus

Parlad and others ...... RESPONDENT (s)

3. **FAO No. 85 of 2015(O&M)**

Universal Sampo General Company Ltd. ...... APPELLANT(s)

Versus

Prem and others ...... RESPONDENT (s)

4. **FAO No. 86 of 2015(O&M)**

Universal Sampo General Company Ltd. ...... APPELLANT(s)

Versus

Bateri Devi and others ...... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajiv Kumar Saini, Advocate
for the appellants in FAO Nos.9410 and 9411 of 2014 and
for respondents No.1 and 2 in FAO No.85 of 2015 and
for respondents No.1 to 6 in FAO No.86 of 2015.

Mr. Rohit Gupta, Advocate
for the appellant in FAO Nos.85 and 86 of 2015 and
for respondent No.3 in FAO No.9410 and 9411 of 2014.

Mr. Jayoti Parshad, Advocate
for respondents No.1 and 2 in FAO No.9410 and 9411 of 2014
for respondents No.3 and 4 in FAO No.85 of 2015 and
for respondents No.7 and 8 in FAO No.86 of 2015.

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LISA GILL, J.

This order shall dispose of FAO No.9410 of 2014 (Prem and another v. Parlad and others), FAO No.9411 of 2014 (Prem and another v. Parlad and others), FAO No.85 of 2015 (Universal Sampo General Company Ltd. v. Prem and others) and FAO No.86 of 2015 (Universal Sampo General Company Ltd. v. Bateri and others). All the four appeals arise out of the common award dated 22.03.2014 passed by the learned Motor Accident Claims Tribunal, Karnal (for short, the 'Tribunal').

FAO Nos.9410 and 9411 of 2014 have been filed by the claimants seeking enhancement of the compensation awarded to them by the learned Tribunal vide consolidated award dated 22.03.2014 on account of death of Banti @ Mohit and Satish, respectively, in a motor vehicle accident.

FAO Nos.85 and 86 of 2015 have been filed by the Universal Sampo General Company Ltd. (hereinafter referred to as the 'Insurance company') challenging its liability to pay the compensation awarded to the claimants by the learned Tribunal.

Brief facts necessary for adjudication of the case are that, the claimants in both the cases filed separate petitions under Section 166 of the Motor Vehicles Act (for short, the 'Act'). MACT case No.106 of 2013 was filed by Prem and Rajo claiming compensation on account of death of their son Banti @ Mohit in a motor vehicle accident which took place on 21.03.2012. MACT case No.157 of 2013 was filed by the widow, children and parents of the deceased-Satish seeking compensation on account of his death in the abovesaid motor vehicle accident. FIR No.92 (Ex.P3) dated 21.03.2012 under Sections 279/337/304A IPC, Police Station Nissin was registered against driver of the offending tractor trolley. Learned Tribunal on consideration of the facts and evidence on record held that the accident in question took place due to the rash and negligent driving of the tractor trolley bearing registration No.HR-40B-4476 by respondent-Parlad.

In MACT No.106 of 2013, the learned Tribunal awarded a sum of ₹5,00,000/- as compensation to the claimants vide impugned award. The deceased was a 14 year old boy. Notional income of the deceased was assessed as ₹30,000/- per month. Multiplier of 15 was applied. ₹25,000/- each was awarded towards funeral expenses and loss of love & affection.

In MACT No.157 of 2013, the learned Tribunal awarded a sum of ₹14,40,000/- as compensation to the claimants vide impugned award. The deceased was 25 years old at the time of the accident. Income of the deceased was assessed as ₹5,000/- per month. Increment at the rate of 50% on account of future prospects was afforded. Deduction to the extent of 1/4th was effected and multiplier of 18 was applied. ₹25,000/- was awarded towards funeral expenses, besides, ₹1,00,000/- each to claimant No.1 on account of loss of consortium and loss of care and guidance to the minor children.

Learned counsel for the claimants in FAO No.9411 of 2014 submits that the learned Tribunal has erred in assessing the income of the deceased to be ₹5,000/- per month only whereas there is specific evidence on record to show that the deceased was working as a carpenter with PW4 Suraj Bhan who specifically deposed before the learned Tribunal that he had employed the deceased-Satish six months prior to the accident in question. Deceased was given a salary of ₹8,000/- per month and he was also earning approximately ₹4,000/- per month by working overtime. It is thus prayed that compensation awarded to the claimants should be enhanced.

Learned counsel for claimants in FAO No.9410 of 2014 (parents of deceased Banti @ Mohit) submits that notional income of the deceased has been wrongly assessed as ₹30,000/- per month. Moreover, multiplier of 18 instead of 15 should have been applied. It is thus prayed that compensation awarded to the claimants be enhanced accordingly.

It is submitted by learned counsel for the appellant-Insurance company that compensation awarded to the claimants in MACT No.157 of 2013 i.e., pertaining to the death of Satish is excessive inasmuch as 50% increment has been afforded on account of future prospects and excessive amount has been awarded for loss of consortium to the claimant-widow and loss of care & guidance for the minor children. It is prayed that the compensation in the said case be thus reduced.

Learned counsel for the respondent-Insurance company has opposed any enhancement in the said matter while submitting that reasonable and just compensation has already been awarded on account of the death of Banti @ Mohit, who was a 14 years of age at the time of the accident in question. It is however not disputed that Banti @ Mohit was a student at the relevant time.

I have heard learned counsel for the parties and have gone through the photocopy of the relevant record.

FAO No.85 and 86 of 2015 are filed by the Insurance company primarily on the ground that the driver of the offending vehicle i.e., the tractor trolley was not holding a valid driving licence inasmuch as the respondent-driver was not authorised to drive a heavy vehicle i.e., a tractor trolley. It is however fairly stated that the matter is now squarely covered against the Insurance company in view of the judgment of the Hon'ble Supreme Court in **Mukund Dewangan v. Oriental Insurance Company Limited**, ***2017 (4) RCR (Civil) 111*** wherein it has been held as under:-

> "A transport vehicle and omnibus, the gross vehicle weight of either of which does not exceed 7500 kg. would be a light motor vehicle and also motor car or tractor or a road roller, 'unladen weight' of which does not exceed 7500 kg. and holder of a driving licence to drive class of "light motor vehicle" as provided in Section 10(2)(d) is competent to drive a transport vehicle or omnibus, the gross vehicle weight of which does not exceed 7500 kg. or a motor car or tractor or road-roller, the "unladen weight" of which does not exceed 7500 kg. That is to say, no separate endorsement on the licence is required to drive a transport vehicle of light motor vehicle class as enumerated above. A licence issued under Section 10(2)(d) continues to be valid after Amendment Act 54/1994 and 28.3.2001 in the form."

Therefore, it cannot be said that respondent-driver was not holding a valid driving licence or not authorised to drive the tractor-trolley.

In respect to MACT No.157 of 2013, there is no dispute that the deceased-Satish was 25 years old at the time of his death. The claimants have specifically stated that the deceased was working as a carpenter with PW4 Suraj

Bhan, earning ₹8,000/- per month as well as another amount of ₹4,000/- per month by working overtime. PW4 Suraj Bhan testified that he had employed Satish (deceased) at his shop and was paying him a sum of ₹8,000/- per month, besides, Satish used to earn approximately ₹4,000/- per month by working overtime. It is relevant to note that the accident in question took place on 21.03.2012 at about 5.00 p.m. Specific case even as mentioned in FIR No.92 (Ex.P3) which was registered on the very same day at the instance of PW4 Suraj Bhan, is that Satish was working at the said furniture shop. There is indeed no evidence on record to discredit or rebut the evidence led by the claimants to the effect that the deceased was working as a carpenter. There is however no specific documentary evidence to prove the salary or income of the deceased to be ₹12,000/- per month i.e., ₹8,000/- salary and ₹4,000/- overtime. At the same time income of the deceased cannot be taken to be ₹5,000/- per month as assessed by the learned Tribunal in the peculiar circumstances of the case where the deceased is proved to be a carpenter. Keeping in view the facts and circumstances of the case, income of the deceased is assessed as ₹7,000/- per month.

Taking income of the deceased-Satish to be ₹7,000/- per month, increment at the rate of 40% instead of 50% has to be afforded keeping in view his age in terms of the judgment of the Hon'ble Supreme Court in **National Insurance Company Limited v. Pranay Sethi and others**, ***2017(16) SCC 680***. Deduction to the extent of 1/4th has to be effected and multiplier of 18 is to be applied. ₹15,000/- each towards funeral expenses (instead of ₹25,000/-) and loss of estate is to be awarded. In terms of the judgment of the Hon'ble Supreme Court in **Magma General Insurance Company Ltd. v. Nanu Ram Alias**

Chuhru Ram & Ors., in Civil Appeal No.9581 of 2018 decided on 18.09.2018, all the appellants are entitled to ₹40,000/- each on account of loss of consortium instead of ₹2,00,000/-.

Appellants-claimants in FAO No.9411 of 2014 are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	***Heads of Claim***	***Amount***
1.	Income	7,000 p.m. i.e. ₹84,000/- per annum
2.	Total income after addition at the rate of 40% on account of future prospects	84,000 + (84,000 **x** 40%) = 1,17,600
3.	Income after 1/4th deduction on account of personal expenses	1,17,600 – (1,17,600 **x** 1/4) = 88,200
4.	Total dependancy after applying a multiplier of 18	(88,200 **x** 18) = 15,87,600
5.	Loss of estate	15,000
6.	Funeral expenses	15,000
7.	Loss of filial consortium to appellants no.1 and 2 at the rate of ₹40,000/-.	(40,000 **x** 2) = 80,000
7.	Loss of spousal consortium to appellant no.3	40,000
7.	Loss of parental consortium to appellants no.4 to 6 at the rate of ₹40,000/-.	(40,000 **x** 3) = 1,20,000
	Grand Total	₹18,57,600/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the appellants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

In respect to MACT No.106 of 2013, deceased-Banti @ Mohit son of the appellants in FAO No.9410 of 2014 was 14 years old at the time of his death, pursuing his studies. Learned Tribunal has assessed the notional income of the deceased at ₹30,000/- per annum while relying upon the judgment of the Hon'ble Supreme Court in **Krishan Gopal and another v. Lala and others,** ***2013(4) RCR (Civil) 276***. This Court in FAO No.3964 of 2014 (Chet Ram and another v. Gautam Kumar and others) dated 21.09.2017 assessed the notional income of a child aged 8 years, who lost his life in an accident which took place in the year 2011 as ₹50,000/- per annum. It was specifically observed therein that the Hon'ble Supreme Court in Krishan Gopal's case (supra) had assessed the notional income of a 10 year old child at ₹30,000/- per annum wherein the accident had taken place in the year 1992, thus it was considered appropriate to assess the notional income of the child to be ₹50,000/- per annum. Reference was also made to the judgment of the Hon'ble Supreme Court in **Lata Wadhwa and others v. State of Bihar and others,** ***2001(4) RCR(Civil) 673***.

In the present case, the accident in question took place in the year 2014. The deceased was a 14 year old boy pursuing his studies. It is thus considered just and appropriate to assess the notional income of the deceased-Banti @ Mohit as ₹50,000/- per annum. Multiplier of 15 has to be applied keeping in view the judgment of the Hon'ble Supreme Court in **Smt. Sarla Verma and others Vs. Delhi Transport Corporation and another**, ***2009(3) RCR (Civil)*** *77*. ₹15,000/- each towards funeral expenses (instead of ₹25,000/-) and loss of estate are awarded to the appellants in view the judgment of the Hon'ble Supreme Court in Pranay Sethi's case (supra). In terms of the judgment of the Hon'ble Supreme Court in Magma General Insurance Company Ltd.'s case (supra), both the appellants are entitled to ₹40,000/- each on account of loss of filial consortium.

Appellants-claimants in FAO No.9410 of 2014 are, thus, entitled to compensation which is re-worked as under:-

Sr.No.	*Heads of Claim*	*Amount*
1.	Income	50,000 p.a.
2.	Total dependancy after applying a multiplier of 15	(50,000 **x** 15) = 7,50,000
3.	Loss of estate	15,000
4.	Funeral expenses	15,000
5.	Loss of filial consortium at the rate of 40,000	(40,000 **x** 2) = 80,000
	Grand Total	₹8,60,000/-

Needless to say, the amount already awarded by the learned Tribunal shall stand deducted from the compensation as detailed above. Appellants shall be entitled to interest on the enhanced amount at the rate of 7.5% per annum from the date of filing of the petition till realization. Ratio of apportionment amongst the appellants as well as manner of disbursement as determined by the learned Tribunal shall remain the same.

FAO Nos.85 and 86 of 2015 filed by the Insurance company are dismissed. With the modification in the amount of compensation, FAO Nos.9410 and 9411 of 2014 filed by the claimants are disposed of.

(LISA GILL)
JUDGE

November 27 , 2018.
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No